

RCRA REVISION CHECKLIST 34

Land Disposal Restrictions

51 FR 40572-40654

November 7, 1986

as amended on June 4, 1987, at 52 FR 21010-21018

(HSA Cluster I)

Notes: 1) The following Part 268 sections are not delegable to States because of the national concerns which must be considered when decisions are made relative to them: 268.5 (case-by-case effective date extensions); 268.42(b) (application for an alternate treatment method); and 268.44 (variance from a treatment standard). The preamble (51 FR 40618) to the November 7, 1986 rule (the first LDR rule), addressed by this present checklist, clearly states that 268.5 is not delegable. The second LDR rule, called the California List Waste Rule (52 FR 25760, July 8, 1987; Revision Checklist 39), clarified that 268.42(b) and 268.44 are nondelegable. It also clarified the delegability of 268.6. "No migration" petitions under 268.6 will be handled by EPA, even though States may be authorized to grant these petitions in the future. States have the authority to grant such petitions under RCRA Section 3006 because such decisions do not require a national perspective as is the case for decisions under 268.5, 268.42(b), or 268.44. However, EPA has had few opportunities to implement the land disposal restrictions and expects to gain valuable experience and information from reviewing "no-migration" petitions.

2) In the past, the nondelegable sections/paragraphs of the LDR regulations have been omitted from the LDR checklists because States could not assume the authority for them. However, this procedure has led to confusion among the States on how to handle the sections/paragraphs in their code. For this reason, the Agency has decided to include these nondelegable sections on the LDR checklists. To differentiate these sections from the delegable portions of the LDR restrictions, asterisks precede (a single row) and follow (a double row) each non-delegable section. If States have already filled out a version of Revision Checklist 34 which does not include the nondelegable sections, they need not fill out a revised version containing these sections. This change in format was made only to improve clarity.

The Agency suggests that States incorporate the nondelegable portions of the LDR regulation into their regulations because this incorporation aids the regulated community in knowing that the extensions, exemptions and variances addressed by the nondelegable sections of code are available to them. It is essential, however, that States leave the terms "Administrator", "Federal Register" and "Agency" unchanged, i.e., States may not substitute analogous State terms for these Federal terms. Similarly, States incorporating by reference must be careful to exclude these sections from blanket substitutions of State terms for Federal terms. For a more complete discussion of issues surrounding nondelegable sections, see Appendix J of the State Authorization Manual (SAM).

3) Note that while 268.40 is delegable to States, "Administrator" in the following phrase "Approved by the Administrator under the procedures set for this in 268.42(b)" should not be replaced with an analogous State term because it is referring to decisions under 268.42(b). Such decisions will be made by the EPA Administrator.

RCRA REVISION CHECKLIST 34: Land Disposal Restrictions (cont'd)

4) Revision Checklist 50 (53 FR 31138, August 17, 1988) amends certain sections of code addressed by Revision Checklist 34, but does not affect the delegability outlined in the previous note. Other related checklists include Revision Checklist 62 (54 FR 18836, May 2, 1989), Revision Checklist 63 (54 FR 26594, June 23, 1989), Revision Checklist 66 (54 FR 36967, September 6, 1989), Revision Checklist 78 (55 FR 22520, June 1, 1990), and Revision Checklist 83 (56 FR 3864).

FEDERAL REQUIREMENT	FEDERAL RCRA CITATION	ANALOGOUS STATE CITATION	STATE ANALOG IS:		
			EQUIV- ALENT	MORE STRINGENT	BROADER IN SCOPE

PART 260 - HAZARDOUS WASTE MANAGEMENT SYSTEM: GENERAL

SUBPART A - GENERAL

PURPOSE, SCOPE, AND APPLICABILITY

insert

"and 268" 260.1(a)

insert

"and 268" 260.1(b)(1)

insert

"and 268" 260.1(b)(2)

insert

"and 268" 260.1(b)(3)

insert

"and 268" 260.1(b)(4)

AVAILABILITY OF INFORMATION; CONFIDENTIALITY OF INFORMATION

insert

"and 268" 260.2(a)

insert

"and 268" 260.2(b)

USE OF NUMBER AND GENDER

insert

"and 268" 260.3

SUBPART B - DEFINITIONS

DEFINITIONS

insert

"and 268" 260.10

SUBPART C - RULEMAKING PETITIONS

GENERAL

† insert
"and 268" 260.20(a)

PART 261 - IDENTIFICATION AND LISTING OF HAZARDOUS WASTE

SUBPART A - GENERAL

PURPOSE AND SCOPE

insert "268," 261.1(a)

insert ", 268" 261.1(a)(1)

EXCLUSIONS

insert "268," 261.4(c)

remove "267"

insert "268" 261.4(d)(1)

SPECIAL REQUIREMENTS FOR HAZARDOUS WASTE GENERATED BY
CONDITIONALLY EXEMPT SMALL QUANTITY GENERATORS

insert
", 268," 261.5(b)

insert
", 268," 261.5(c)

insert
", 268," 261.5(e)

insert
", 268," 261.5(f)(2)

insert
", 268," 261.5(g)(2)

REQUIREMENTS FOR RECYCLABLE MATERIALS

insert
"268," 261.6(a)(3)

insert
"268," 261.6(c)(1)

RESIDUES OF HAZARDOUS WASTE IN EMPTY CONTAINERS

insert
"268," 261.7(a)(1)(ii)

insert
"268," 261.7(a)(2)(ii)

RCRA REVISION CHECKLIST 34: Land Disposal Restrictions (cont'd)

FEDERAL REQUIREMENT	FEDERAL RCRA CITATION	ANALOGOUS STATE CITATION	STATE ANALOG IS:		
			EQUIV- ALENT	MORE STRINGENT	BROADER IN SCOPE

SUBPART C - CHARACTERISTICS OF HAZARDOUS WASTE

GENERAL

insert
"268,"

261.20(b)

SUBPART D - LISTS OF HAZARDOUS WASTES

GENERAL

insert
"268,"

261.30(c)

PART 262 - STANDARDS APPLICABLE TO GENERATORS OF HAZARDOUS WASTE

SUBPART A - GENERAL

HAZARDOUS WASTE DETERMINATION

reference to
exclusions/
restrictions

262.11(d)

PART 263 - STANDARDS APPLICABLE TO TRANSPORTERS OF HAZARDOUS WASTE

SUBPART A - GENERAL

TRANSFER FACILITY REQUIREMENTS

insert
", 268"

263.12

RCRA REVISION CHECKLIST 34: Land Disposal Restrictions (cont'd)

FEDERAL REQUIREMENT	FEDERAL RCRA CITATION	ANALOGOUS STATE CITATION	STATE ANALOG IS:		
			EQUIV- ALENT	MORE STRINGENT	BROADER IN SCOPE

PART 264 - STANDARDS FOR OWNERS AND OPERATORS OF HAZARDOUS WASTE
TREATMENT, STORAGE AND DISPOSAL FACILITIES

SUBPART A - GENERAL

PURPOSE, SCOPE AND APPLICABILITY

1 facilities to which

Part 264 applies 264.1(h)

SUBPART B - GENERAL FACILITY STANDARDS

GENERAL WASTE ANALYSIS

1 insert

"Part 268" 264.13(a)(1)

insert

"268.7" 264.13(b)(6)

exempted surface
impoundment plan
specifications

264.13(b)(7)

SUBPART E - MANIFEST SYSTEM, RECORDKEEPING, AND REPORTING

OPERATING RECORD

add "268.4(a)"

and "268.7" 264.73(b)(3)

land disposal units
under an extension or
petition and notice
by generator under

§268.7(a)(3) 264.73(b)(10)

off-site treatment
facility

264.73(b)(11)

on-site treatment
facility

264.73(b)(12)

off-site land
disposal facility

264.73(b)(13)

1 on-site land

disposal facility 264.73(b)(14)

RCRA REVISION CHECKLIST 34: Land Disposal Restrictions (cont'd)

FEDERAL REQUIREMENT	FEDERAL RCRA CITATION	ANALOGOUS STATE CITATION	STATE ANALOG IS:		
			EQUIV- ALENT	MORE STRINGENT	BROADER IN SCOPE

PART 265 - INTERIM STATUS STANDARDS FOR OWNERS AND OPERATORS OF
HAZARDOUS WASTE TREATMENT, STORAGE AND DISPOSAL FACILITIES

SUBPART A - GENERAL

PURPOSE, SCOPE, AND APPLICABILITY

facilities to which
part 265 applies

265.1(e)

SUBPART B - GENERAL FACILITY STANDARDS

GENERAL WASTE ANALYSIS

insert

"Part 268"

265.13(a)(1)

insert

"268.7"

265.13(b)(6)

exempt surface
impoundment plan
specifications

265.13(b)(7)

SUBPART E - MANIFEST SYSTEM, RECORDKEEPING, AND REPORTING

OPERATING RECORD

add "268.4(a)"
and "268.7"

265.73(b)(3)

land disposal units
under an extension
or petition

265.73(b)(8)

off-site treatment
facility

265.73(b)(9)

on-site treatment
facility

265.73(b)(10)

off-site land
disposal facility

265.73(b)(11)

on-site land
disposal facility

265.73(b)(12)

PART 268 - LAND DISPOSAL RESTRICTIONS

RCRA REVISION CHECKLIST 34: Land Disposal Restrictions (cont'd)

		STATE ANALOG IS:			
FEDERAL REQUIREMENT	FEDERAL RCRA CITATION	ANALOGOUS STATE CITATION	EQUIV- ALENT	MORE STRINGENT	BROADER IN SCOPE
SUBPART A - GENERAL					
PURPOSE, SCOPE, AND APPLICABILITY					
purpose	268.1(a)				
applicability	268.1(b)				
conditions for continued land disposal	268.1(c)				
persons with an extension	268.1(c)(1)				
persons with an exemption	268.1(c)(2)				
CERCLA/corrective action	268.1(c)(3)				
waste from small quantity generators <100 kg/mo as defined in 261.5	268.1(c)(4)				
DEFINITIONS APPLICABLE TO THIS PART					
"hazardous constituent or constituents"	268.2(a)				
"land disposal"	268.2(a)				
all other terms	268.2(b)				
DILUTION PROHIBITED AS A SUBSTITUTE FOR TREATMENT					
dilution not substitute for treatment	268.3				
TREATMENT SURFACE IMPOUNDMENT EXEMPTION					
exempt treatment surface impoundments	268.4(a)				
treatment in impoundments	268.4(a)(1)				

RCRA REVISION CHECKLIST 34: Land Disposal Restrictions (cont'd)

FEDERAL REQUIREMENT	FEDERAL RCRA CITATION	ANALOGOUS STATE CITATION	STATE ANALOG IS:		
			EQUIV- ALENT	MORE STRINGENT	BROADER IN SCOPE
sampling, operating, waste removal and waste handling procedures	268.4(a)(2)				
1 design requirements/ exemptions	268.4(a)(3)				
exempt under 264.221(d),(e) or 265.221(c),(d)	268.4(a)(3)(i)				
1 meets §3005(j)(2)	268.4(a)(3)(ii)				
1 satisfies §3005(j)(11) no migration	268.4(a)(3)(iii)				
1 written certification	268.4(a)(4)				

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Guidance note: 268.5 is NOT DELEGABLE. States should see Note 2 at the beginning of this checklist regarding how to incorporate this section into their code.

PROCEDURES FOR CASE-BY-CASE EXTENSIONS TO AN EFFECTIVE DATE

application to EPA Administrator for an extension to effective date of any Part 268, Subpart C restriction; what the applicant must demonstrate:	268.5(a)
good-faith effort to locate and contract with treatment, recovery, or disposal facilities nationwide to manage waste according to Subpart C effective date	268.5(a)(1)

RCRA REVISION CHECKLIST 34: Land Disposal Restrictions (cont'd)

FEDERAL REQUIREMENT	FEDERAL RCRA CITATION	ANALOGOUS STATE CITATION	STATE ANALOG IS:		
			EQUIV- ALENT	MORE STRINGENT	BROADER IN SCOPE
binding contractual commitment for alter- native capacity that meets Subpart D treatment standards	268.5(a)(2)				
demonstration that alternative capacity cannot reasonably be available by effective date due to circumstances beyond applicant's control; how this must be demonstrated	268.5(a)(3)				
capacity being con- structed or provided by applicant must be sufficient capacity for entire quantity of waste	268.5(a)(4)				
1 detailed schedule for obtaining required permits or outlines of how and when alleviate capacity available	268.5(a)(5)				
arranged for adequate capacity during exten- sion and documented in all site locations where wastes will be managed	268.5(a)(6)				
surface impoundment or landfill used must meet 268.5(h)(2) requirements	268.5(a)(7)				
1 certification by authorized represen- tative signing an application	268.5(b)				
Administrator may request additional information	268.5(c)				

RCRA REVISION CHECKLIST 34: Land Disposal Restrictions (cont'd)

FEDERAL REQUIREMENT	FEDERAL RCRA CITATION	ANALOGOUS STATE CITATION	STATE ANALOG IS:		
			EQUIV- ALENT	MORE STRINGENT	BROADER IN SCOPE
extension applies only to waste generated at individual facility covered by extension	268.5(d)				
1 Administrator may grant extension of up to 1 year from effective date; extension for 1 additional year if 268.5(a) demonstration can still be made; no extension beyond 24 months from 268, Subpart C effective date; length of extension determined by Administrator and basis; public notice and comment; final decision published in Federal Register	268.5(e)				
notify Administrator of change in certified conditions	268.5(f)				
written progress reports at intervals designated by Administrator; what progress reports must include; conditions for revocation of extension by Administrator	268.5(g)				
during period established by Administrator for which extension is in effect:	268.5(h)				
268.5(a)(1) storage restrictions do not apply	268.5(h)(1)				
disposal at new units,					

RCRA REVISION CHECKLIST 34: Land Disposal Restrictions (cont'd)

FEDERAL REQUIREMENT	FEDERAL RCRA CITATION	ANALOGOUS STATE CITATION	STATE ANALOG IS:		
			EQUIV- ALENT	MORE STRINGENT	BROADER IN SCOPE
replacement units, or lateral expansion of existing units in compliance with specific requirements	268.5(h)(2)				
1 interim status landfill requirements	268.5(h)(2)(i)				
1 permitted landfill requirements	268.5(h)(2)(ii)				
1 interim status surface impoundment requirements	268.5(h)(2)(iii)				
permitted surface impoundment requirements	268.5(h)(2)(iv)				
1 pending decision on application, com- pliance with all land disposal restrictions once effective date has been reached	268.5(i)				

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Guidance note: 268.6 is NOT DELEGABLE. States should see Note 2 at the beginning of this checklist regarding how to incorporate this section into their code.

PETITIONS TO ALLOW LAND DISPOSAL OF A WASTE PROHIBITED
UNDER SUBPART C OF PART 268

submit petition to Administrator; demonstration of no waste migration; demonstration components	268.6(a)				
identify specific unit and waste	268.6(a)(1)				
waste analysis	268.6(a)(2)				

RCRA REVISION CHECKLIST 34: Land Disposal Restrictions (cont'd)

FEDERAL REQUIREMENT	FEDERAL RCRA CITATION	ANALOGOUS STATE CITATION	STATE ANALOG IS:		
			EQUIV- ALENT	MORE STRINGENT	BROADER IN SCOPE
comprehensive disposal unit characterization	268.6(a)(3)				
criteria which demonstration must meet	268.6(b)				
accurate and reproducible sampling, tests and data	268.6(b)(1)				
Administrator approved sampling, testing and estimation techniques	268.6(b)(2)				
model calibration; models verified with actual data	268.6(b)(3)				
quality assurance/ control plan approved by Administrator	268.6(b)(4)				
uncertainty analysis	268.6(b)(5)				
petition submitted to Administrator	268.6(c)				
1 signed statement	268.6(d)				
Administrator may request additional information	268.6(e)				
waste unit to which petition applies	268.6(f)				
Administrator gives public notice in <u>Federal Register</u> ; final decision in <u>Federal Register</u>	268.6(g)				
term of petition	268.6(h)				
1 requirements prior to Administrator's decision	268.6(i)				
1 petition granted by Administrator does not relieve responsibilities					

RCRA REVISION CHECKLIST 34: Land Disposal Restrictions (cont'd)

FEDERAL REQUIREMENT	FEDERAL RCRA CITATION	ANALOGOUS STATE CITATION	STATE ANALOG IS:		
			EQUIV- ALENT	MORE STRINGENT	BROADER IN SCOPE
under RCRA	268.6(j)				

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<u>WASTE ANALYSIS</u>					
1 generator determines if restricted waste	268.7(a)				
1 notice by generator to treatment facility	268.7(a)(1)(i-iv)				
1 generator notice/ certification to disposal facility	268.7(a)(2)				
information require- ments in notice to disposal facility	268.7(a)(2)(i)				
1 certification signature/statement	268.7(a)(2)(ii)				
1 generator notice to disposal facility for wastes under exten- sion for variance	268.7(a)(3)				
1 maintenance of data supporting knowledge of waste	268.7(a)(4)				
1 tests by treatment facility for wastes with treatment standards	268.7(b)				
1 notice by treatment facility to land disposal facility/ information needed	268.7(b)(1)(i-iv)				
1 certification of each shipment	268.7(b)(2)				
wastes with concentration standards	268.7(b)(2)(i)				
1 wastes with technology standards	268.7(b)(2)(ii)				
1 requirements for land disposal facility	268.7(c)				

RCRA REVISION CHECKLIST 34: Land Disposal Restrictions (cont'd)

FEDERAL REQUIREMENT	FEDERAL RCRA CITATION	ANALOGOUS STATE CITATION	STATE ANALOG IS:		
			EQUIV- ALENT	MORE STRINGENT	BROADER IN SCOPE

SUBPART C - PROHIBITIONS ON LAND DISPOSAL

WASTE SPECIFIC PROHIBITIONS - SOLVENT WASTES

1	prohibited spent solvent wastes	268.30(a)			
	small quantity generator 2-year exemption	268.30(a)(1)			
	CERCLA/corrective action 2-year exemption	268.30(a)(2)			
1	concentration specific exemption (solvent waste with 1% total solvent constituent)	268.30(a)(3)			
	landfill/surface impoundment disposal	268.30(b)			
	situations where (a) and (b) do not apply	268.30(c)			
1	wastes meet Subpart D, 268 standards	268.30(c)(1)			
1	disposal at facility with successful no-migration petition	268.30(c)(2)			
1	wastes for which case-by-case extension has been granted	268.30(c)(3)			

WASTE SPECIFIC PROHIBITION - DIOXIN-CONTAINING WASTES

1	prohibited dioxin-containing wastes including FO22 wastes	268.31(a)			
	situations where (a) doesn't apply	268.31(b)			
1	waste treated to meet Subpart D, 268	268.31(b)(1)			
1	disposal at facility with petition	268.31(b)(2)			
1	extension	268.31(b)(3)			

RCRA REVISION CHECKLIST 34: Land Disposal Restrictions (cont'd)

FEDERAL REQUIREMENT	FEDERAL RCRA CITATION	ANALOGOUS STATE CITATION	STATE ANALOG IS:		
			EQUIV- ALENT	MORE STRINGENT	BROADER IN SCOPE

1 landfill/surface
impoundment disposal 268.31(c)

SUBPART D - TREATMENT STANDARDS

APPLICABILITY OF TREATMENT STANDARDS

2 applicability/
relationship
to prohibition 268.40

TREATMENT STANDARDS EXPRESSED AS CONCENTRATIONS IN WASTE EXTRACT

1 treatment standards/
Table CCWE 268.41(a)
standards for common
constituents in
combined wastes 268.41(b)

TREATMENT STANDARDS EXPRESSED AS SPECIFIED TECHNOLOGIES

waste treated
by identified
technologies 268.42(a)

**

Guidance note: 268.42 is NOT DELEGABLE. States should see Note 2 at the beginning of this checklist regarding how to incorporate this paragraph into their code.

submit application to
Administrator
demonstrating
alternate treatment
method; criteria for
Administrator
to approve 268.42(b)

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TREATMENT STANDARDS EXPRESSED AS WASTE CONCENTRATIONS

RCRA REVISION CHECKLIST 34: Land Disposal Restrictions (cont'd)

FEDERAL REQUIREMENT	FEDERAL RCRA CITATION	ANALOGOUS STATE CITATION	STATE ANALOG IS:		
			EQUIV- ALENT	MORE STRINGENT	BROADER IN SCOPE
section reserved	268.43				

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Guidance note: 268.44 is NOT DELEGABLE. States should see Note 2 at the beginning of this checklist regarding how to incorporate this section into their code.

VARIANCE FROM A TREATMENT STANDARD

conditions for variance; petition Administrator; what must be demonstrated	268.44(a)
procedures in accordance with 260.20	268.44(b)
1 statement signed by petitioner or autho- rized representative	268.44(c)
1 additional information or samples may be requested by Administrator; additional copies for affected States and region	268.44(d)
1 Administrator gives public notification in <u>Federal Register</u> ; final decision in <u>Federal Register</u>	268.44(e)
268.7 waste analysis requirements must be followed for wastes covered by variance	268.44(f)

RCRA REVISION CHECKLIST 34: Land Disposal Restrictions (cont'd)

FEDERAL REQUIREMENT	FEDERAL RCRA CITATION	ANALOGOUS STATE CITATION	STATE ANALOG IS:		
			EQUIV- ALENT	MORE STRINGENT	BROADER IN SCOPE
1 requirements during petition review	268.44(g)				

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SUBPART E - PROHIBITIONS ON STORAGE

PROHIBITIONS ON STORAGE OF RESTRICTED WASTES

1 exemptions to storage prohibitions	268.50(a)				
1 on-site storage exemption for generator	268.50(a)(1)				
1 treatment, storage, and disposal facility exemption	268.50(a)(2)				
1 container labeling	268.50(a)(2)(i)				
1 tank labeling	268.50(a)(2)(ii)				
1 transporter exemption	268.50(a)(3)				
storage up to one year	268.50(b)				
storage longer than one year	268.50(c)				
1 wastes affected by a petition or exemption	268.50(d)				
wastes meeting specified treat- ment standards	268.50(e)				

APPENDIX I TO PART 268

TOXICITY CHARACTERISTIC LEACHING PROCEDURE (TCLP)

1 description of TCLP	Appendix I				
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RCRA REVISION CHECKLIST 34: Land Disposal Restrictions (cont'd)

FEDERAL REQUIREMENT	FEDERAL RCRA CITATION	ANALOGOUS STATE CITATION	STATE ANALOG IS:		
			EQUIV- ALENT	MORE STRINGENT	BROADER IN SCOPE

APPENDIX II TO PART 268

TREATMENT STANDARDS (AS CONCENTRATIONS IN
THE TREATMENT RESIDUAL EXTRACT)

table Appendix II

PART 270 - EPA-ADMINISTERED PERMIT PROGRAMS; THE HAZARDOUS
WASTE PERMIT PROGRAM

SUBPART B - PERMIT APPLICATIONS

CONTENTS OF PART B: GENERAL REQUIREMENTS

copy of notice of
approval of petition
or extension 270.14(b)(21)

SUBPART C - PERMIT CONDITIONS

ESTABLISHING PERMIT CONDITIONS

insert
"through 268"
remove "267" 270.32(b)(1)

SUBPART D - CHANGES TO PERMITS

3 MINOR MODIFICATIONS OF PERMITS

conditions for
treating non-
specified waste 270.42(o)
prohibited from
disposal/treat-
ment standards 270.42(o)(1)
treatment under
standards/variance 270.42(o)(2)
no increased or
substantially
different risks 270.42(o)(3)

RCRA REVISION CHECKLIST 34: Land Disposal Restrictions (cont'd)

FEDERAL REQUIREMENT	FEDERAL RCRA CITATION	ANALOGOUS STATE CITATION	STATE ANALOG IS:		
			EQUIV- ALENT	MORE STRINGENT	BROADER IN SCOPE
Federal/State approval; allowable modifications	270.42(o)(4)				

- ¹ Also see technical correction to the rule at 52 FR 21010 (June 4, 1987).
- ² The reference to "Administrator" near the end of this paragraph should not be replaced with an analogous State term. See Note 3 as the beginning of this checklist.
- ³ States need to add 270.42(o) only if they adopted an analog to 270.42 - Minor Modification of Permits - as part of their base program. Adoption of 270.42 is up to each State's discretion as it is not required under 271.14.